

ARKANSAS SUPREME COURT

No. CR 07-265

JAMES HORVATH
Petitioner

v.

POPE COUNTY CIRCUIT COURT
Respondent

Opinion Delivered May 10, 2007

PRO SE PETITION FOR WRIT OF
CERTIORARI, AMENDMENT TO
PETITION FOR WRIT OF
CERTIORARI, AND MOTION FOR
WRIT TO OBTAIN TRANSCRIPT
[CIRCUIT COURT OF POPE COUNTY,
CR 2007-96]

PETITION, AMENDED PETITION AND
MOTION DISMISSED.

PER CURIAM

A judgment entered in Russellville District Court reflects that petitioner James Horvath was convicted of harassment and disorderly conduct. The judgment further reflects that a \$20,000 commercial bond was imposed as an appeal bond by the district court and that petitioner was not indigent. Petitioner, acting pro se, filed a notice of appeal in the district court and a pro se motion for reduction of bond. Later, petitioner's attorney, Mr. John Burnett, also filed an appeal of that conviction in Pope County Circuit Court. Petitioner now brings this petition for writ of certiorari in this court, seeking release from detention and elimination or reduction of the bond imposed as a condition of his release. In addition, petitioner filed an amendment to his petition and a motion, which both request this court to order production of the transcript of a hearing. Although not clearly so, petitioner appears to allege this hearing was held in circuit court. He more clearly claims that, in the hearing, he was found indigent and counsel appointed. We note that petitioner's address as of the date of the filing of the

petition does reflect his incarceration, although no other information on that point is available to us.

Under Ark. R. Crim. P. 36, issues relating to petitioner's conviction, incarceration and the bond set as a result of the proceedings in district court are to be appealed to circuit court. Notice of appeal, as required by Rule 36, was timely filed in the circuit court by petitioner's attorney. Petitioner admits that Mr. Burnett was appointed to represent him, and does not contend that Mr. Burnett has been relieved as counsel. Instead, petitioner complains that counsel has failed to make adequate argument, provide needed transcripts or bring appropriate appeals.

We do not reach the merits of petitioner's arguments for writ of certiorari as it is clear that petitioner is represented by counsel in this matter. Although he does so through a request for writ of certiorari, petitioner in essence seeks to appeal the decision of the district court and, if such a decision has been rendered, the circuit court. An appellant is not entitled to accept appointment of counsel to represent him, and also proceed pro se. *Hamilton v. State*, 348 Ark. 532, 74 S.W.3d 615 (2002). Moreover, this court will not permit an appellant to compete with his attorney to be heard in an appeal. *Franklin v. State*, 327 Ark. 537, 939 S.W.2d 836 (1997) (per curiam); see also *Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991) (per curiam). We will not allow petitioner to substitute his judgment as to how and whether to contest an order issued in these proceedings for that of his attorney. As it appears that Mr. Burnett is conducting an appeal of petitioner's conviction in circuit court as required by Rule 36, to permit petitioner to proceed with his petition in this court would be to inappropriately intercede into those proceedings.

As we explained in *Monts*, counsel possesses the superior ability to examine the record, research the law and marshal arguments in the defendant's behalf. With the exception of certain fundamental decisions, it is the attorney's duty to take professional responsibility for the conduct of the case, after consulting with his client. *Monts*, 305 Ark. at 206, 806 S.W.2d at 381-382. In the event that a dispute

develops between counsel and his client such that the preparation and presentation of an adequate defense is jeopardized, the defendant may seek to retain or have appointed a new attorney. *Id.* Moreover, to the extent petitioner claims ineffective assistance of counsel, those claims are not cognizable in this court unless specifically raised below. *See Hadley v. State*, 322 Ark. 472, 910 S.W.2d 675 (1995). An accused is not guaranteed a meaningful attorney-client relationship or an exemplary rapport with his appointed attorney. *Burns v. State*, 300 Ark. 469, 780 S.W.2d 23 (1989). Further, the right to counsel does not encompass the right for the accused to substitute his or her judgment for counsel's professional judgment. *Hadley*, 322 Ark. at 477, 910 S.W.2d at 678.

Accordingly, we will not entertain petitioner's pro se request for writ of certiorari. Unless and until counsel should be relieved, any such petition or appeal should be filed by counsel on petitioner's behalf.

Petition, amendment and motion dismissed.